

Human Rights and the Fight Against Terrorism in Northern Ireland

LESLIE MACFARLANE

After a discussion of the United Kingdom's responsibilities under the European Convention of Human Rights and the political background to the re-emergence in 1968-69 of terrorism and the stationing of British troops in the Province, the article analyses those human rights issues which derive from the way the fight against terrorism has been conducted over the past 20 years. The issues discussed are, deaths resulting from the actions of the security forces, complaints of ill-treatment by the police during interrogation, the detentioning of terrorist suspects, the use of exclusion orders to deport from the United Kingdom to Northern Ireland persons formerly resident in that Province, the use of juryless courts (Diplock Courts) for terrorist and other offences, and the banning of political organizations.

The European Convention on Human Rights

The United Kingdom of Great Britain and Northern Ireland, as a member of the Council of Europe, ratified the European Convention on Human Rights in 1951. It was not, however, until 1981 that it recognized the right of the European Human Rights Commission to receive complaints from individuals or organizations claiming to be the victim of a rights violation (Article 25) and undertook to accept as binding the decisions of the European Court of Human Rights (Article 46). The Convention on Human Rights provides for a signatory 'in time of war or other emergency threatening the life of the nation' to take measures 'derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation' (Article 15). No derogation is permitted under Article 2 (no deprivation of life) 'except in respect of deaths resulting from lawful acts of war'; Article 3 (no subjection to torture or to inhuman or degrading treatment or punishment; Article 4.1 (no one to be held in slavery or servitude) and Article 7 (no conviction or punishment for an act which was not a criminal offence at the time committed).

In 1957 the United Kingdom government informed the Council of Europe that it was exercising its right of derogation under Article 15 in respect of the situation of emergency existing in Northern Ireland due to the recurrence of organized terrorism and that, 'to the extent strictly required by the exigencies of the situation'. It had exercised powers to

detain persons, to search and seize and to prohibit the publication and distribution of certain printed material. In 1969 the Council of Europe was informed of the use of arrest and detention without trial and in 1971 of the introduction of internment (involving derogation under Articles 5 and 6). In 1975 the Council was told that the last detainees had been released, and in 1984 that the United Kingdom was no longer availing itself of the right of derogation since it held itself to be complying with all the requirements of the Convention. In 1989, however, following a ruling of the European Court of Human Rights that detentions of four persons from Northern Ireland for more than four days under the Prevention of Terrorism Act 1984 violated Article 5.3's requirement of promptness in bringing before a judge; the British government, rather than amend the Act, derogated from its obligations under Article 5.3. In the many cases involving the British government taken to the European Commission and the European Court of Human Rights during the period of derogation these bodies never questioned that a state of emergency existed in Northern Ireland justifying derogation under Article 15.

The IRA bases its case for political violence, directed to securing the ending of British rule over Northern Ireland, on the principle of the right of peoples to self-determination,¹ as set out in Article 1 of both the *International Covenant of Civil and Political Rights* and the *International Covenant of Economic, Social and Cultural Rights* of the United Nations. It is to this principle that the Palestinian Liberation Front (PLO) refers to justify its use of violence against Israel to create a homeland for the Palestinians, both those living in Israel and those outside in Jordan, etc. Since the PLO claims to a Palestinian state have the backing of the United Nations, it is not surprising that the IRA, and its political wing Sinn Fein, should seek to portray their struggle on behalf of the Irish people against Britain as politically a morally equivalent to that of the PLO against Israel.

But, unlike the Palestinians in the occupied territories, the Catholic minority in Northern Ireland, have full civil and political rights on the same terms as the Protestant majority. A closer parallel can be drawn between the IRA and that of the Basque terrorist organization, ETA. ETA uses terrorism designed to coerce the democratic Spanish state into conceding to the Basque people an independence which has been rejected by the Basques in free elections. There can be no justification whatsoever for the perpetration of political violence claimed to be on behalf of the people, which has as its immediate aim the thwarting of the expressed will of that people. This is the position of the IRA as well as of ETA.

At the 1987 elections in the Republic of Ireland Sinn Fein secured less

than 2 per cent of the total vote, while in Britain's 1987 parliamentary elections it obtained 11.4 per cent of the votes cast for Northern Ireland constituencies. A 1988 *Belfast Telegraph* poll showed 35 per cent of Catholics supporting 'Devolved Government with power sharing between Catholics and Protestants' as 'the best form of Government for Northern Ireland', compared with 22 per cent supporting a United Ireland, 2 per cent a Federal Ireland and 11 per cent rule by a joint London/Dublin authority, with 17 per cent other options and 13 per cent don't know.² It is worth stressing that under Irish law all those born in Northern Ireland are regarded as citizens of the Republic, entitled to take up residence and employment in the Republic. Very few Northern Ireland Catholics avail themselves of this entitlement largely because living standards in the South are significantly lower than in the North.

Nevertheless, there is substantial support for Sinn Féin in Northern Ireland among Catholics especially in the working-class ghetto areas of Belfast and Londonderry. Approximately one third of Catholics voting opt for Sinn Féin and two thirds for the Social Democratic and Labour Party (SDLP). The latter party resolutely opposes the use of violence to secure its goal of a united Ireland. However, support for Sinn Féin does not necessarily mean support for political violence – a February 1989 poll showed one third of Sinn Féin voters believed that the party should renounce 'the armed struggle'.³ This however, would still leave, nearly one quarter of Catholic voters not disapproving of the armed struggle. This relatively high figure is in stark contrast with the minimal support for IRA violence in the Republic and reflects the very different position and experience of the Catholic communities in the South and the North.

Catholics in the South have been living for over 70 years within their own state and are satisfied with the status quo. In contrast, during the first 50 years of the existence of Northern Ireland, Catholics were treated by the permanent Ulster Unionist Government as subversives dedicated to securing the incorporation of the northern counties into the South. Economically and socially Catholics were discriminated against by the Protestant majority; politically they were impotent with their representations and interests largely ignored. With successive governments of the Republic content to pay lip-service to the cause of Irish unity and Ulster unionists confident of their ability to maintain Protestant domination in the North, Northern Ireland Catholics reluctantly settled for the position of second-class citizens.

This uneasy peace continued until the emergence in the late 1960s of the civil rights movement heading a mass struggle for equal rights for the Catholic community. The dreadful outcome was an upsurge of Protestant mob and gang violence in 1968 and 1969 resulting in hundreds of

Catholics being injured and thousands being forced to quit their homes in the mixed population areas of Belfast and Londonderry. With the Royal Ulster Constabulary (RUC), at best reluctant to intervene against Protestant violence and on occasion joining in the fray, Catholics in the beleaguered ghetto areas turned to the IRA for protection, a protection they were initially very ill-prepared to provide.

The response of the British Labour government to these developments was to bring British troops to Northern Ireland to keep the peace between the two communities until the RUC could be reorganized and retrained to act impartially to uphold law and order. The aim of the IRA, and in particular the breakaway Provisional IRA set up at the end of 1969, was to carry out a campaign of harassment, assault and killing of British troops as an 'occupation army'. The strategy was to provoke British retaliatory action to clear the IRA from the ghetto communities in order to strengthen the IRA's hold on these communities and to align them firmly behind the 'Troops Out' campaign. In this they were successful, since the Army reacted to IRA attacks in the ways they had been taught based on the experience of fighting against communist guerrillas in Malaya and the Mau Mau in Kenya.

In July 1970 a major security sweep was mounted in a sealed-off area of Catholic West Belfast. Hundreds of armed troops systematically went through the street house by house searching for weapons and explosives. Large quantities were seized, but at the expense of five civilians killed and 60 injured and with fearful damage to scores of houses. A further security sweep in August was designed to find and detain 350 named IRA suspects, but was in large part a fiasco as faulty intelligence resulted in a large proportion of those picked up and interrogated having to be released. Pdraig O'Malley, a stern critic of the IRA, wrote of the incident in his highly acclaimed book *The Uncivil Wars: Ireland Today*:

Whole areas were sealed off, paratroops smashing down doors and literally dragging men from their homes in front of hysterical wives and terrified children . . . the random brutality, the abuse of rights, the uncertainty, the callous indifference of the Army to enquiries as to the whereabouts or the fate of internees, the holding of a small number at secret locations for interrogation in depth, transformed the psychology of the conflict. The Army, 'the Brits', had become the enemy.⁴

A further source of Catholic grievance was that, as with the RUC and the Ulster government, the Army under British direct rule concentrated almost all its energies against the IRA, ignoring loyalist paramilitary groups; though the latter had initiated violence and murder against

Catholics in 1968 and 1969. Thus, though internment of terrorist suspects was introduced in 1971, no loyalist suspects were interned until 1973, confirming moderate Catholic suspicions that the security forces operated on a discriminatory basis. In recent years security operations have been more even-handed; and the RUC now finds itself subject to harassment and attack from extremists in both communities.

Terrorism and Human Rights

Before discussing the main areas of human rights which have been affected by security operations against terrorism, it is important to give British and American readers some idea of the scale of the impact of terrorism in Northern Ireland. Since 1969 approximately 2,750 persons have been killed and an estimated 32,000 injured as a direct result of terrorist activity and the fight against that activity.⁵ This is proportionately equivalent in population terms to 100,000 deaths and 1 million injured in Great Britain (i.e., excluding Northern Ireland), and to 400,000 deaths in the USA, over eight times the number of US troops killed in the Vietnam War (46,000).

In a 1981 case brought against the British government relating to the use of detention powers the European Commission of Human Rights in 1981 declared:

The existence of organized terrorism is a feature of modern society and faces democratic Governments with a problem of organized crime which they must cope with in order to preserve the fundamental rights of their citizens. The measures they take must comply with the Convention and the Convention organs must always be alert to the danger in this sphere . . . of undermining or even destroying democracy on the grounds of defending it . . . However . . . some compromise between the requirements for defending democratic society and individual rights is inherent in the system of the Convention.⁶

Human rights issues deriving from the way the fight against terrorism has been waged in Northern Ireland are examined in the light of this assessment.

(i) Deaths resulting from Actions by the Security Forces

Deaths directly attributable to actions of the security forces (Army and Police) for the 20 years since 1969 amount to approximately one seventh of those attributable to republican and loyalist paramilitary bodies, in the ratio of approximately five republicans to two loyalists.⁷ The deaths take a

number of forms and raise different issues. Where deaths arise from an armed paramilitary attack on the security forces the only serious issue likely to rise is one of the proportionality of the response. The situation is significantly altered where the security forces, on the basis of information received, lay a trap for terrorists planning a raid and where in the ensuing shoot-out a number of terrorists are killed. The question here is whether the terrorists could have been stopped and arrested without 'shooting to kill'.

The most celebrated case of this sort was the March 1988 killing of three IRA terrorists who were believed to have planted a 500lb. bomb in a car primed to explode in the central square in Gibraltar at the time of the weekly changing of the guard, when it would have caused terrible carnage. Eyewitnesses had alleged that the plain-clothed SAS members involved had neither challenged the suspects nor made any attempt to capture them. A Spanish coroner's jury decided by nine to two that the three men have been lawfully killed. Other doubtful cases have involved the ambushing and shooting of 'known' leading active members of republican terrorist groups where no evidence was produced in court to show that those killed, often unarmed, were engaged in the preparation or perpetration of terrorist acts.

The point of issue is whether the killings were deliberately caused and whether they resulted from a deliberate official policy or had unofficial approval from above. In December 1986 Amnesty International called for an official judicial inquiry into 34 fatal killings by the security forces which had given rise to accusations of premeditated killing. No such inquiry has been held. Instead the Home Office asked John Stalker, Deputy Chief Constable of the Greater Manchester Police, to conduct an investigation. John Stalker's inquiry into three incidents of killing by RUC officers led him to conclude that 'five men shot dead in their cars were unlawfully killed by members of the Royal Ulster Constabulary', leaving still to be determined 'whether senior police officers were involved in the formulation of any deliberate policies of shooting to kill'. Before these could be investigated Stalker was removed from the inquiry under bizarre circumstances.⁸ The outcome was far from reassuring.

(ii) Use of Plastic Bullets to control Riots

Since 1969 some 100,000 rubber and plastic bullets have been fired by the security forces in riot situations resulting in 15 deaths, three of them children aged 10, and 11.⁹ Inquests found six of the dead to be innocent victims. Only one member of the RUC has been prosecuted for firing a fatal round and he was acquitted; though it was clear from TV film of the incident that the officer concerned had not complied with the RUC's own

rules on firing plastic bullets. While the European Parliament in 1982 condemned the use of plastic bullets, the European Commission of Human Rights in 1984 ruled in the case of a 13-year-old boy killed by a plastic bullet, that the action taken by the soldier concerned was 'action lawfully taken for the purpose of quelling a riot' under Article 2.2(c) of the European Convention. One positive development in the past few years has been the decreasing use of plastic bullets; 1,000 rounds were fired in 1989 compared with 3,000 in 1988.

(iii) Torture or Inhuman or Degrading Treatment

In 1978 the European Court of Human Rights in the case of *Republic of Ireland v. UK* found by 16 votes to 1 that the use of interrogation techniques of wall-standing, hooding, subjection to continuous noise, deprivation of sleep and deprivation of food and drink against 14 persons detained in Northern Ireland in 1971, constituted 'inhuman and degrading treatment', but not torture, under Article 2 of the Convention. The British government pledged itself not to re-introduce these techniques, a pledge which has been kept. What this case showed, other than the dreadful level to which interrogation officers had stooped in these cases, was the very stringent nature of the ill-treatment which has to be established to constitute 'inhuman or degrading treatment' under Article 2.

(iv) Complaints of Ill-treatment by the Police

Almost all complaints about ill-treatment concern the behaviour of RUC detectives during interrogation. Accusations, mainly from Catholics, were rife in the period up to 1977 when strong representations by Amnesty International were successful in forcing an official investigation under Justice Bennett. With the implementation of his recommendations there was, as Amnesty International noted, a reduction in the number of allegations of assault and ill-treatment – allegations made by loyalist as well as by republican suspects. A new Independent Commission for Police Complaints was set up in 1987, but while it may in particular cases appoint investigating officers from outside the RUC, it has no power itself to investigate a complaint. The new system has been a disappointment. Complaints are still running at around 2,000 a year, but from 800 cases completed during 1989 only one formal disciplinary charge was proved, with 12 others resulting in not guilty findings.¹⁰

The major problem is the not surprising absence of independent witness evidence in almost all cases of alleged assault. To help overcome this Lord Colville, in his 1990 official report on the working of emergency legislation in Northern Ireland, recommended that all interviews should

be videoed. The proposal was not accepted by the British government. The RUC had strongly opposed video-recording on the grounds that such videos might be used to identify officers and target them for killing. It is difficult to accept this argument since the chances of such videos becoming available to terrorists outside must be very small. In May 1991 the government stated that it would consider appointing an independent commissioner to monitor procedures at RUC detention centres where paramilitary suspects were held.

(v) Internment without Trial

Though the last internees were released in 1975 the British government has retained internment powers on the statute book and rejected Lord Colville's recommendation that the powers be revoked. From time to time the government is urged by loyalists to reintroduce internment to put away 'known' terrorists; it being argued (with some justification) that RUC intelligence is much more extensive and reliable than it was when the powers were used 20 years ago. The reintroduction of internment would be bitterly opposed by the SDLP and the Irish government, as well as by the Catholic Church and by the government-appointed Northern Ireland Standing Advisory Commission on Human Rights.

A worsening security situation and mounting pressure from the two Protestant Unionist parties led the Northern Ireland Secretary, Peter Brooke, to declare in October 1991 that *selective* internment could not be ruled out. If it came, no advance notice would be given. The introduction of internment would require derogation under Articles 5 and 6 of the European Convention on Human Rights.

(vi) Detention and Questioning of Suspects

Under the emergency legislation operative in Northern Ireland a person may be detained if there is 'reasonable suspicion' that he or she is or has been 'concerned in the commission, preparation or investigation of acts of terrorism'. However, there are strong grounds for believing that such detention is commonly used against persons whom the RUC has reason to believe are in the possession of information which may directly or indirectly assist them in the fight against terrorism; rather than of persons believed to be concerned in the committal of a terrorist offence, as required by the law. In his official review of the Northern Ireland Emergency Provisions Act, 1978, Sir George Baker suggested that, in view of the widespread criticism of the alleged use of arrest powers for 'information gathering', it might 'be better' to have the power spelt out in legislation, as it was in the Northern Ireland Special Powers Act, 1922.¹¹ This suggestion has not been taken up by the authorities who continue in

public to deny that 'information gathering' takes place.

(vii) Exclusion Orders

Exclusion orders made by the Secretary of State for Home Affairs exclude any UK subject from being in, or entering Great Britain (England, Wales and Scotland) or Northern Ireland if the person concerned has been resident in the area he or she is to be excluded from for less than three years. These powers have been almost entirely used against Northern Ireland subjects resident in Great Britain to return them forcibly to Northern Ireland. There is no legal right of appeal against an exclusion order. Though the excluded person is entitled to make representation for consideration by an Independent Advisor, the final decision rests with the Secretary of State. The compatibility of exclusion orders with the European Convention on Human Rights has not been tested before the European Commission or European Court of Human Rights. The exclusion powers have attracted opposition from all parties in Northern Ireland and from the Standing Advisory Commission on Human Rights, as a measure discriminating against Northern Ireland. In his 1990 Report Lord Colville recommended that the powers should be allowed to lapse but the government did not accept his recommendation.

(viii) Diplock Courts

Though trial by jury is not a requirement of the European Convention on Human Rights, it is an integral part of the conception of a 'fair trial' in English Law. Diplock Courts, a judge sitting without a jury, were introduced in Northern Ireland in 1973 on grounds of intimidation of jurors and verdicts running contrary to the evidence in terrorist cases. Serious crimes, including all terrorist offences, are scheduled for hearings before a Diplock Court. Grave disquiet was aroused in the notorious early 1980s 'supergrass trials' where, on the basis of the uncorroborated evidence of a confessed terrorist, up to 40 other terrorist suspects were tried. In cases based solely on uncorroborated evidence a judge is required to warn the jury of the dangers of relying solely on such evidence; giving rise to the odd situation of a Diplock judge having to warn himself – in most cases to no apparent avail and to ill-effect.

Not only were most of the accused convicted but in subsequent appeal proceedings 64 out of 65 of those convicted had their sentences quashed on grounds of the unreliability of the evidence. 'Supergrass trials' have fortunately died out but the stigma attaching to the Diplock Courts remains. Given that members of both communities would like to see a return to trial by jury and that jury trials work successfully in non-terrorist cases, it is suggested that their use should be extended. This could be

achieved through the Attorney-General descheduling all non-terrorist cases and being given power, at his discretion, to deschedule in particular terrorist cases.

(ix) *Banning of Political Organizations*

The IRA has been banned in Northern Ireland since 1922, in the Republic of Ireland since 1939 and in Great Britain since 1974. Sinn Féin was banned in Northern Ireland from 1922 until 1974, when the ban was lifted by the British government. A number of Protestant paramilitary groups, such as the Ulster Volunteer Force (UVF) are banned as well as the Republican Irish National Liberation Army.

There can be no doubting the legal and moral right of the British government to ban organizations such as the IRA and UVF engaged in terrorist activity, but what of Sinn Féin? Given that Sinn Féin outspokenly supports the campaign of bombing and shooting carried out by the IRA, there is no prospect of a successful challenge to a ban on Sinn Féin under the European Convention on Human Rights. Unionist Parties favour such a ban while the SDLP and the Irish Republic would oppose it as counterproductive, a view currently shared by the Northern Ireland Secretary of State.

A more limited and selective proposal recently aired is that it should be made a criminal offence to support publicly the killing of political adversaries. A provision of this sort would permit action against such leading Sinn Féin figures as Gerry Adams and Martin McGuinness, without any ban of Sinn Féin itself. Such a move would be in line with the ban which has been in operation since 1988 on Sinn Féin spokesman appearing or being interviewed on British television and radio. An almost identical ban has been in operation in the Republic since 1962. An action brought against the Irish ban was dismissed in 1991 by the European Commission of Human Rights as 'manifestly ill-founded'.

Most British newspapers and TV newsmen are opposed to the ban, as is the Labour Party. The Shadow Home Secretary Roy Hattersley has claimed that the ban enables the IRA to argue that the British government are afraid of the public hearing the case against keeping British troops in Northern Ireland. Sinn Féin, however, seems unimpressed by the weight of this argument. They have campaigned vigorously against the ban because it makes it more difficult to get their case across to the British public.

How far successive British governments have succeeded in striking an appropriate 'compromise between the requirements of defending democratic society and individual rights' in Northern Ireland is a matter of contention, but in the author's view, while individual rights have been

infringed in certain important areas, British governments cannot justifiably be accused of 'undermining or even destroying democracy on the grounds of defending it'. The full exercise of freedom of rights of religion, of expression and association by all groups in Northern Ireland is a clear substantiation of this.

NOTES

1. See my article 'The Right to Self-Determination in Ireland and the Justification of IRA Violence', *Terrorism and Political Violence* 2/1 (Spring 1990), pp.35-53.
2. *Belfast Telegraph*, 5 Oct. 1988.
3. Quoted in *Fortnight: An Independent Review of Politics and the Arts (Belfast)*, (Dec. 1990).
4. Padraig O'Malley, *The Uncivil Wars: Ireland Today* (Belfast, Blackstaff Press, 1983), p.208.
5. Kevin Magee, 'Statistical Reminders', *Fortnight* (Sept. 1989), p.13.
6. McVeigh, O'Neill and Evans v. UK: Report adopted by the European Commission of Human Rights on 18 March 1981: Decisions and Reports No.25 (Strasbourg, 1982).
7. Irish Information Partnership, 'Twenty Years: The Death Toll' in *Fortnight* (Feb. 1989).
8. See John Stalker, *Stalker: Ireland, 'Shoot to Kill' and the 'Affair'* (Harmondsworth: Penguin, 1988).
9. L. J. Macfarlane, *Human Rights: Realities and Possibilities - Northern Ireland, the Republic of Ireland, Yugoslavia and Hungary* (Basingstoke: Macmillan Press, 1990), pp.35-7.
10. Tom Hadden, 'Complaining too little', *Fortnight* (Sept. 1990), p.7.
11. Sir George Baker, *Review of the Operation of the Northern Ireland (Emergency Provisions) Act 1979* (Cmnd. 9222) 1984, para 263.